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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JULIO S. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

AIMEE C.,

Defendant and Appellant.

D049663

(Super. Ct. No. 10192A-D)

APPEAL from orders of the Superior Court of San Diego County, Peter Riddle, Judge. (Retired Judge of the San Diego Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Aimee C. appeals from orders declaring her minor children, Julio S., Ethan U., Melody U., and V.M., dependents of the juvenile court under Welfare and Institutions

Code section 300, subdivision (b)¹. Aimee challenges the sufficiency of the evidence to support the court's jurisdictional findings. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2006, the San County Diego Health and Human Services Agency (Agency) filed petitions in the juvenile court on behalf of 10-year-old Julio S., six-year-old Ethan C., three-year-old Melody C., and two-year-old V.M. Before the trial court held the jurisdiction and disposition hearings, the Agency submitted a number of reports that revealed that Aimee had an extensive child welfare history consisting of repeated allegations of physical abuse and neglect.

In 1997, when Julio was 10 months old, he was declared a dependent after he sustained injuries consistent with shaken baby syndrome. After receiving reunification services, Aimee regained custody of Julio, and jurisdiction was terminated. However, when Julio was about three years old, there were reports that he had been physically abused and left to wander into a busy street. At school, Julio exhibited troubling behaviors. He used vulgar language, attempted to stab classmates with a pencil and made threats about wanting to kill school personnel. In addition to behavioral concerns, Julio suffered from significant health problems, including anxiety attacks that required that he be hospitalized. Julio's doctor prescribed Ritalin to address his behavioral problems, but Aimee stopped giving Julio his medication and did not follow the advice of doctors to ensure that Julio regularly participated in therapy.

¹ All statutory references are to the Welfare and Institutions Code.

In November 2005, the Agency provided Aimee with a voluntary case plan. The plan focused on stabilizing the family's housing, addressing school attendance, medication management, and therapy for both Aimee and Julio. The Agency also assisted Julio by enrolling him in a special school program in which he would receive therapy and assistance with academics. Dr. Linda Helinski conducted a psychological evaluation of Julio and diagnosed him with attention deficit hyperactivity disorder, an impulse control disorder, and a learning disorder. Julio also was diagnosed with a seizure disorder. He required medication. Dr. Helinski recommended that Julio receive counseling to address his behavioral and medical problems. However, Aimee repeatedly failed to take Julio to his therapy sessions and medical appointments. His aggression and negative behavior continued to escalate. One day, he brought a pellet gun to school. Ethan's behavior also began to deteriorate, and his attendance at school was poor. He displayed aggressive behaviors at school and was found in possession of a knife.

In February 2006, a social worker visited the family's home and found it to be in extreme disarray. The children were dirty and hungry. The social worker observed Ethan attempting to cook and saw Aimee fighting with Julio. Aimee admitted that she was overwhelmed with the responsibilities of caring for the children. The social worker provided Aimee with referrals to obtain food, money for rent, and supplies for the family. At a subsequent visit, the social worker found Julio locked in his room yelling that he had no clean clothes and that he had not been fed. The house was unsanitary, with piles of dog feces on the floor. Trash was strewn across the floor, there were dirty clothes everywhere, and there was very little food for the children to eat. In addition to the home

being in an unsanitary condition, utilities such as water service and electricity had been discontinued at various points in time. The social worker reported that Melody and V. were often dirty and that they had hardly any clothing.

The Agency filed petitions on behalf of the minors. The petitions alleged that Aimee had been given an opportunity to provide necessities to the minors, but that she had failed to cooperate with her voluntary case plan. The petitions further alleged that the minors had been exposed to unsafe and unhealthy conditions in the home.

Concerning Julio, the petition asserted that he had been diagnosed with various behavioral disorders, and that Aimee had been unwilling or unable to care for Julio or to provide adequate treatment to address his needs. At the detention hearing, the court found that a prima facie showing had been made on the allegations of the petitions, detained the minors in out-of-home care, and ordered Aimee to participate in services.

Following the hearing, Aimee did not make progress with services. By September 2006, Aimee had missed one drug test and had failed to appear for two therapy sessions. Aimee admitted to the social worker that she had abused methamphetamines while pregnant, and that she had been involved in domestic violence with Francisco M., V.M.'s presumed father.

The minors continued to exhibit behavioral problems and the social worker assessed that the minors were in need of security and comfort. Julio expressed anger and frustration toward Aimee. He told the social worker that he used to smoke "weed" The social worker described Ethan as an angry child who required assistance with anger management. Melody was diagnosed as anemic, and she suffered from head lice.

Melody's visits with Aimee did not go well. Melody's foster mother reported that Aimee brought Francisco with her when she came to visit Melody, and Aimee admitted to the foster mother that she had resumed a relationship with him. In September 2006, Aimee kidnapped Ethan and took him to Mexico. Two days after the kidnapping, Aimee contacted the police and said she would not return Ethan until all of the children were returned to her. The police recovered Ethan and arrested Aimee for kidnapping and child stealing.

The court held a contested jurisdiction and disposition hearing. Aimee did not appear because she was in prison. The court considered the Agency's reports. The Agency requested that the court amend count 1 of the minors' petitions to reflect that Aimee was unable to provide the minors with an adequate home because there was no parent or guardian to whom they could be released. The court sustained the petitions as amended, declared the minors dependents, and removed them from Aimee's custody.

DISCUSSION

I

The Evidence is Sufficient to Support the Juvenile Court's Jurisdictional Findings

Aimee challenges the sufficiency of the evidence to support the court's jurisdictional findings under section 300, subdivision (b). She asserts that the time of the jurisdiction hearing, evidence of her inability to follow her case plan, to provide a proper

home and to provide for Julio's needs was insufficient to support a finding that the minors were at substantial risk of suffering physical harm or illness.²

A. Standard of Review

In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk that the child will suffer, serious physical

² Aimee argues that the fact she is incarcerated and unable to take custody of the minors should not render her challenges to the petitions moot. The Agency does not argue that Aimee's challenges are moot. Instead, it argues that there is sufficient evidence to support the court's jurisdictional findings as to all three counts in the petition, regardless of her incarceration. We agree with the Agency's contentions.

harm or illness as a result of the parent's failure to adequately supervise or protect the child or to provide adequate medical treatment. In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196.

B. The Juvenile Court Properly Exercised Jurisdiction Over the Minors

As set forth in the petitions, Aimee failed to comply with her case plan, to keep her home free from unsanitary conditions, and to provide proper care for Julio. As shown at the time of the jurisdiction hearing, there was sufficient evidence for the court to find that the minors would remain at risk of suffering harm if the court did not exercise jurisdiction over them. The record shows that the minors endured a long history of abuse and neglect, throughout their lives. Before the Agency filed petitions on behalf of the minors, it provided Aimee with an opportunity to comply with a voluntary case plan. However, Aimee did not complete services and her parenting skills did not improve. She continued to neglect the minors. Specifically, Julio and Ethan's behavioral problems worsened because Aimee was unwilling or unable to provide them with proper care. She repeatedly failed to take them to school, medical appointments, and counseling sessions. Melody also showed signs of aggression, and would sometimes direct profanities at Aimee. The court also made jurisdictional findings as to the unfit condition of the home. The record shows that Aimee maintained filthy and unsanitary living conditions for the

minors. At times, the home did not have running water or electricity. The social worker noted that the home was filled with trash and dirty clothes, and that the floor was covered with piles of dog feces. The minors had little food to eat and often went hungry. Melody and V.M. were often dirty and had very little clothing.

The Agency reported that Aimee had been unwilling or unable to provide Julio with care and treatment to address his behavioral disorders. Doctors prescribed medication for Julio to address his aggressive and impulsive behaviors, but Aimee neglected to administer Julio's prescribed medication. Julio also suffered from a seizure disorder that required consistent monitoring, but Aimee failed to follow up with Julio's medical appointments and laboratory work. The Agency placed Julio in a special school in an effort to better address his needs. However, Julio missed about two-thirds of his classes and was late most of the time when he did attend. As a result, Julio's behavior worsened and his violence toward others increased.

It was reasonable for the court to infer from Aimee's failure to comply with her case plan and her history of severe neglect of the children that they would currently be at risk to suffer serious physical harm or illness if the court did not exercise jurisdiction over them. Under these circumstances, the court is entitled to intervene to prevent further harm. Substantial evidence supports the court's finding. (*In re Heather A.*, *supra*, 52 Cal.App.4th at pp. 194-196.)

DISPOSITION

The orders are affirmed.

AARON, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.